

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

SENDMYGIFT.COM, Inc.,

BKY 00-35021 (GFK)  
Chapter 11

Debtor

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SENDMYGIFT.COM, Inc.,

Plaintiff,

v.

ADV 04-3035

**DEFENDANTS  
MEMORANDUM IN OPPOSITION TO  
PLAINTIFF'S MOTION  
FOR PARTIAL SUMMARY JUDGMENT**

Daryl A. Shiber, Kimberly G. Shiber,  
DHS Corporation, and K.G.S., LLC,

Defendants.

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**INTRODUCTION**

Sendmygift.com, Inc. moves for partial summary judgment for the turnover of \$53,000 paid to Defendants. Sendmygift. Com, Inc.'s ("sendmygift.com") motion must be dismissed because a material fact issue exists as to the nature and circumstances of the payments.

## **FACTS**

The defendants concur with the plaintiff that Joe Burnett delivered three checks to the defendants totaling \$53,000, however, the defendants disagree with plaintiff's characterization of the payments as a "loan". The first Sendmygift.com check dated December 12, 2001 in the amount of \$19,000 was made payable to DHS Corp and in the memo area referenced "St. Paul Pawn Inventory Purchase-As per agreement 12-19-01 ("First Check"). The second Sendmygift.com check dated January 1, 2002 in the amount of \$19,000 was made payable to Daryl Shiber ("Second Check"). The third Sendmygift.com check dated February 2, 2001 in the amount of \$15,000 was made payable to Kim Shiber. ("Third Check") See Exhibit A to Hoiland Affidavit (Sendmygift.com check numbers 1041, 1044 and 1062). The three Sendmygift.com, Inc. checks total \$53,000. (the First Check, Second Check and Third Check are collectively referred to herein as "The Checks").

On May 31, 2001, K.G.S., LLC purchased an office building at 12345 Portland Building, Burnsville MN (hereinafter "Portland Building") from plaintiff for \$2.4 million. See Exhibit A to Cameron Aff. Attached to Shiber's motion for Partial Summary judgment (Excerpts from Daryl Shiber Deposition hereinafter "Shiber Depo." at p. 9) and Exhibit B (Closing Statement dated May 31, 2001). As part of the purchase, K.G.S, LLC assumed plaintiff's mortgage with Premier Bank. Plaintiff contends that its President Joe Burnett delivered The Checks to the defendants in order to enable K.G.S., LLC to stay current or become current on the Premier Bank mortgage. See Burnett Affidavit. Defendants maintain that Sendmygift.com, Inc. delivered The Checks, not as

loans, but as an investment in a mutual venture. See Exhibit A to Cameron Affidavit (Excerts from Shiber Depo. at pp. 80-83). Defendants' position is supported by the evidence and by Sendmygift.com's conduct.

First, the witnesses agree that their was an investment in the pawn shop. Mr. Shiber testified that the agreement with the plaintiff contemplated the payment of \$75,000 for the purchase of a one-half interest in the pawn shop. Id. Mr. Burnett concedes that Sendmygift.com entered into an agreement with the defendants to purchase an interest in the pawn shop under which Sendmygift.com and the defendants would share the profits equally. See Burnett Affidavit at paragraph 16.

Second, Sendmygift.com's business does not include providing unsecured loans. See Exhibit B to Cameron Aff. (Deposition of Joseph Anthony Burnett hereinafter "Burnett Depo. at p. 96. At the time of its inception in 1999, Sendmygift.com commenced an internet gift buying business and internet service provider. It also invested in a retail jewelry operation, real estate and a residential home mortgage company. The residential mortgage business was terminated prior to filing for bankruptcy. The retail jewelry operation and real estate holdings were liquidated after filing bankruptcy. Burnett Depo. at pp. 5-10. None of these businesses include the making of unsecured loans. Since filing for bankruptcy, Sendmygift.com has not conducted any business other than selling off assets. Burnett Depo. at p. 10.

Third, there is no written evidence of a loan. The Checks prepared by Mr. Burnett make no reference to a Loan. Plaintiff's President, Joe Burnett considers himself experienced in commercial banking. He worked six and one-half years with Norwest

Bank. Burnett Depo. p. 103. Prior to working for Norwest Bank, Mr. Burnett worked for the Minnesota Bankers Association for two years. Id. Currently and unrelated to Sendmygift.com's business, Mr. Burnett is involved with the formation and development of a bank holding company by the name of Maximum Holding International, Inc. Burnett Depo. at pp. 72-75. Mr. Burnett is the Chairman and founder of Maximum Holding International, Inc. Although Mr. Burnett is experienced with commercial lending, he did not require a promissory note and did not make a reference to the loan on the check. Burnett Depo. at p.104. Furthermore, Mr. Burnett, even though he claims the checks were made to bring the loan current made no attempt to deliver The Checks directly to Premier Bank. Mr. Burnett was aware of the existence of the Premier Bank loan yet instead of delivering the payments to Premier Bank, he elected to make the payments to Defendants. See Burnett Affidavit.

## **ARGUMENT**

### **I. SUMMARY JUDGMENT STANDARD.**

Rule 56 (c) of the Federal Rules of Civil Procedure prescribes summary judgment where the evidence demonstrates that there is no genuine issue of fact and that the moving party is entitled to summary judgment as a matter of law. Fed. R. Civ. Proc. 56 (c). Because plaintiff's claim involves a genuine issue of material fact, plaintiff's request for relief should not be granted.

Summary judgment is a 'blunt instrument' and should not be employed to determine issues which suggest that questions be answered before the rights of the parties can be fairly passed upon. It should be employed only where it is perfectly clear that no issue of fact is involved, and that it is not

desirable nor necessary to inquire into facts which might clarify the application of the law.

*Donnay v. Boulware*, 275 Minn. 37, 45 (1966); (although summary judgment is a “blunt instrument” it is favored in defamation case; citing *Foley v. WCCO Television, Inc.*, 449 N.W. 2d 497, 504 (Minn.App. 1989), cert. Denied, 497 U.S. 1038, 110 S.Ct. 3302 (1990).

## **II. SENDMYGIFT.COM, INC. INVESTED IN THE PAWN SHOP.**

Sendmygift.com and defendants agree that sendmygift.com entered into an agreement to purchase a one-half interest in the pawn shop. To date, Sendmygift.com has paid \$53,000 of the \$75,000 it agreed to pay for its interest. Despite overwhelming evidence to the contrary, Sendmygift.com attempts to claim The Checks were delivered as a loan and not as an investment in the Pawn Shop. Sendmygift.com’s President Joe Burnett is an experienced banker. With his experience, he did not evidence the loan with a promissory note, a notation on The Checks or secure it with a mortgage against the Portland Building. Instead, he referenced the Pawn Shop purchase and proceeded with the investment in the Pawn Shop.

It is clear what was intended by the parties. Mr. Burnett intended to enter into an agreement to invest in the Pawn Shop. He entered into the agreement on behalf of Sendmygift.com and commenced payments on the investment. The Defendants relied upon Sendmygift.com’s agreement to invest in the Pawn Shop. Sendmygift.com is obligated to pay the balance of its commitment.

## **CONCLUSION**

Because material facts exist concerning plaintiff's claim, the Plaintiff's motion should be denied.

Dates: July 24, 2004

-e- John F. Cameron .  
John F. Cameron (#218613)  
Cameron Law Office  
33 South Sixth Street, Suite 4100  
Minneapolis, MN 55402  
(612) 341-0394

**Attorney for Defendants**

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re:

SENDMYGIFT.COM, Inc.,

BKY 00-35021 (GFK)  
Chapter 11

Debtor

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SENDMYGIFT.COM, Inc.,

Plaintiff,

v.

ADV 04-3035

**AFFIDAVIT OF JOHN F. CAMERON**

Daryl A. Shiber, Kimberly G. Shiber,  
DHS Corporation, and K.G.S., LLC,

Defendants.

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John F. Cameron, being first duly sworn upon oath, deposes and says the following:

1. I am the attorney representing the defendants, Daryl A. Shiber, Kimberly G. Shiber, DHS Corporation and K.G. S., LLC in the above entitled matter and am licensed to practice law in the state of Minnesota.
2. In support of Defendants' Memorandum in Opposition of Plaintiff's Motion for Summary Judgment, I annex the following true and correct copies of documents produced herein:

**EXHIBIT****DESCRIPTION**

- A. Excerpts of Daryl Shiber's Deposition dated June 22, 2004.
- B. Excerpts of Joe Burnett's Deposition dated July 1, 2004.

Dates: September 24, 2004

-e- John F. Cameron .  
John F. Cameron (#218613)  
Cameron Law Office  
33 South Sixth Street, Suite 4100  
Minneapolis, MN 55402  
(612) 341-0394

**ATTORNEY FOR DEFENDANTS**



## 1 UNITED STATES BANKRUPTCY COURT

## 2 DISTRICT OF MINNESOTA

3 -----  
4 In re:5 SENDMYGIFT.COM, Inc.,  
6 -----

7 SENDMYGIFT.COM, Inc.,

8 Plaintiff,

Bky. No. 00-35021 (GFK)

9 vs.

Chapter 11

Adv. No. 4-3035

10 Daryl A. Shiber, Kimberly G. Shiber,  
11 DHS Corporation, and K.G.S, LLC,12 Defendants.  
13 -----14  
15  
16 DEPOSITION OF

17 DARYL SHIBER

18 June 22, 2004

19 2:20 p.m.  
20  
21  
2223 Reported by:  
24 Mary J. Aldorfer  
25RAY J. LERSCHEN & ASSOCIATES  
324 Plymouth Building  
Minneapolis, MN 55402  
(612) 341-2122

1 Q. Do you recall that he offered to sell you those  
2 desk tops and office equipment sometime in the  
3 three to six months after the closing?

4 A. I don't recall that, no.

5 Q. Do you recall that he wanted too much money for  
6 what you were willing to pay?

7 A. Maybe that's why I don't recall it. You know, I  
8 don't know. I don't know.

9 Q. Do you recall that on this fifty-three thousand,  
10 discussing a payment plan, a repayment plan with  
11 Joe where you'd pay him back the fifty-three  
12 thousand over 90 days?

13 A. No. That was strictly a purchase.

14 Q. Did Joe Burnett or SENDMYGIFT get any value for  
15 that money they paid you?

16 A. Get any value?

17 Q. Yes.

18 A. Half of a pawn shop, if we ever put it together.

19 Q. But it hasn't been put together, right?

20 A. It was put together way back then. They just  
21 didn't come up with the rest of the money.

22 Q. What was put together?

23 A. The operation was there, set up, ready to go.

24 Q. You didn't own it at that time.

25 A. Oh, yeah.

- 1 Q. No, your father-in-law, you said.
- 2 A. Well, my father-in-law owned it. But it was a  
3 paper deal, and he would have just transferred it  
4 over.
- 5 Q. So what claim do you have for keeping that money?
- 6 A. We had an agreement, you know, on opening up a  
7 shop.
- 8 Q. Did you spend any money to open up the shop?
- 9 A. Most of the stuff was already set up. I had the  
10 safe; I had the counters; I had the merchandise; I  
11 had equipment; I had the racks; I had the shelves.
- 12 Q. Everything was all there in December?
- 13 A. It was all ready to go.
- 14 Q. How long had it been closed?
- 15 A. Never opened.
- 16 Q. How long had you owned it?
- 17 A. I paid rent there for -- when I say, "I," you know,  
18 Kim paid -- actually my father-in-law paid it, but  
19 Kim had, you know, gave him the money to pay the  
20 deal --
- 21 Q. For how long?
- 22 A. -- so he owed her the money.  
23 Probably -- oh, gosh, long time.
- 24 Q. Years?
- 25 A. I don't know. Too long.

- 1 Q. Several years.
- 2 A. No. No, it wasn't several years.
- 3 Q. When did your father-in-law get involved with that?
- 4 A. I'll have to find out. I can't remember exactly,
- 5 but I can get that information for you.
- 6 Q. Probably a couple, two or three years before --
- 7 A. Might have been two years. Maybe.
- 8 Q. So somehow Burnett paid you \$53,000, but because he
- 9 hasn't finished the deal, you won't give him his
- 10 money back.
- 11 A. Well, he hasn't finished the deal. He had had
- 12 50 percent of the deal.
- 13 Q. He doesn't want to finish the deal. He wants his
- 14 money back.
- 15 A. Well, you go buy something; you can't just get your
- 16 money back. You have to either go through with it,
- 17 or --
- 18 Q. What's he got to show that he bought anything? Did
- 19 you set up a corporation?
- 20 A. No, he was going to do that.
- 21 Q. He was going to do it.
- 22 A. Yes. Because it was going to be him and Tony. And
- 23 those guys were the ones that were going to run it.
- 24 Q. This was a handshake deal? Did it ever make it to
- 25 a --

- 1 A. A handshake deal, yeah. I've done many of them.
- 2 Q. Not even a napkin in a restaurant.
- 3 A. Not even a napkin. Done many of them, yeah. Can't
- 4 do them much anymore.
- 5 Q. You did pretty good on this one, with fifty-three
- 6 thousand in your pocket.
- 7 A. Well, he'd have done real good if he'd have come up
- 8 with the rest of the money. We'd all make it go.
- 9 Q. And it's all still sitting there?
- 10 A. A lot of it is, you bet.
- 11 Q. You never told Mr. Burnett you were going to use
- 12 the money to bring your account current at Premier
- 13 Bank?
- 14 A. Never.
- 15 Q. Okay. Let's shift subjects here. I'm going to
- 16 hand you what's been marked Shiber Exhibit No. 15.
- 17 This is a letter that looks like -- is that your
- 18 signature there?
- 19 A. Yes, it is.
- 20 Q. Is that Doug Bell's signature?
- 21 A. Yes, it is.
- 22 Q. August 20, 2002?
- 23 A. Yes.
- 24 Q. Do you remember seeing this agreement?
- 25 A. Yes, I do. Yes.

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UNITED STATES BANKRUPTCY COURT

DISTRICT OF MINNESOTA

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In re:

Bky. No. 00-35021 (GFK)

SENDMYGIFT.COM, Inc.,

Chapter 11

Debtor.

COPY

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SENDMYGIFT.COM, Inc.

Adv. No. 04-3035

Plaintiff,

v.

Daryl A. Shiber, Kimberly G. Shiber,

DHS Corporaiton, and K.G.S., LLC

Defendants.  
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The deposition of JOSEPH ANTHONY BURNETT, taken pursuant to Notice of Taking Deposition, before Judith E. Heckel, a Notary Public in and for the County of Hennepin, State of Minnesota, taken the 1st day of July, 2004, at the CAMERON LAW OFFICE, 33 South 6<sup>th</sup> Street, Suite 4100, Minneapolis, Minnesota 55402, commencing at approximately 9:30 a.m.

1 other influences you're under that you think would  
2 affect your ability to testify in this matter?

3 A. Not at all.

4 Q. What is your current residence?

5 A. 2117 - 87<sup>th</sup> Trail North; Brooklyn Park, Minnesota  
6 55443.

7 Q. How long have you resided there?

8 A. 17 years -- or 16 years.

9 Q. And who is your current employer?

10 A. SENDMYGIFT.COM

11 Q. How long have you been employed by them?

12 A. Approximately five years.

13 Q. What is your current position with SENDMYGIFT.COM?

14 A. President.

15 Q. How long have you held that position?

16 A. Approximately five years.

17 Q. Have you held any other positions with SENDMYGIFT.COM  
18 at any other time?

19 A. No, I haven't.

20 Q. And when was SENDMYGIFT.COM formed?

21 A. It was roughly 1978 -- I'm sorry, 1997, '98.

22 Q. And were you SENDMYGIFT.COM'S first president?

23 A. Correct.

24 Q. And have you been the only president?

25 A. Correct.

1 Q. And what business is SENDMYGIFT.COM in, currently?

2 A. We are currently in a Chapter 11 Reorganization Plan  
3 filed in St. Paul, Minnesota. We were in the  
4 E-Commerce business. Effectively, we had a dot com,  
5 and currently, we're trying to work our way out of  
6 Chapter 11, having paid off \$4 million in debt already  
7 and about a million two or three remaining, with that  
8 much in the account, or close to it.

9 Q. And going back to when SENDMYGIFT.COM was started, was  
10 it an E-Commerce business at that point?

11 A. I think the intent was always to be a combination of  
12 an E-Commerce and a bank Internet platform.

13 Q. Prior to filing bankruptcy, what were its clients?

14 A. Mainly consumers. We had unleashed a -- or released,  
15 rather, an Internet gift buying service in November of  
16 '99 and proceeded to have immediate sales.

17 Q. And did that business profile change at all prior to  
18 filing bankruptcy?

19 A. I think we suspended the E-Commerce platform prior to  
20 filing Chapter 11, based on economic reasons and some  
21 embezzlement from a CPA which caused a collateral  
22 amount of damage.

23 Q. So, when you say you suspended the E-Commerce, did you  
24 initiate any other businesses after that?

25 A. The corporation had various interests in the retail



1 jewelry business, as well as owning condominiums in  
2 Rochester, Minnesota, and we had a mortgage company on  
3 France Avenue.

4 Q. And are those businesses currently operating?

5 A. No. We suspended every -- well, we sold the property  
6 in Rochester, closed the jewelry store and the  
7 Heartland Mortgage Company down when economic reasons  
8 caused it to be the best judgment to do so.

9 Q. And was the jewelry business closed before the  
10 bankruptcy was filed, or after?

11 A. After.

12 Q. Did you run that, too, or did you have someone on site  
13 running it?

14 A. No. I had two different managers running that.

15 Q. What were their names?

16 A. Keith -- I can't think of his last name right offhand,  
17 and Tony Chulla.

18 Q. And the mortgage company, was that closed prior to  
19 filing bankruptcy or after?

20 A. Prior.

21 Q. How much prior?

22 A. Approximately 10 months. I might be wrong on that.

23 Q. And the condos in Rochester, were those for rent or  
24 for sale?

25 A. We rented them, and then we ultimately sold them.

1 Q. So, is it accurate to say that prior to filing the  
2 bankruptcy at some -- well, in the period of time  
3 between when SENDMYGIFT.COM was commenced and put into  
4 operation and the date that the bankruptcy was filed,  
5 the business had an E-Commerce business, it owned some  
6 rental real estate, it ran a retail jewelry shop, and  
7 it had a mortgage company?

8 A. Correct.

9 Q. Is that the extent of its business operations?

10 A. We also were in the process of forming an Internet  
11 service provider company.

12 Q. Anything else?

13 A. Not that I can think of right at this time.

14 Q. And you say you were forming the Internet service  
15 provider. Did you ever have any clients in that?

16 A. We were just about to when the economic conditions  
17 changed. We built the entire platform on our  
18 Enterprise equipment.

19 Q. So you didn't have any clients?

20 A. Yeah, we did have our own clients. We had our -- the  
21 SENDMYGIFT.COM was running through it.

22 Q. What are their names?

23 A. SENDMYGIFT.COM.

24 Q. That was its sole client?

25 A. That was its sole client.

1 Q. Ever have any revenues in that particular part of the  
2 operation?

3 A. Technically, Telemere was also a reseller of computer  
4 components along with the ISP.

5 Q. And did you ever generate any revenues on your  
6 Internet service provider operation?

7 A. I don't recall. I think we -- the one company -- it  
8 was just getting started, so I would say safely no  
9 outside income. I think there was some internal  
10 income.

11 Q. And in the mortgage company, you testified that that  
12 was closed down about 10 months prior to filing the  
13 bankruptcy petition; is that correct?

14 A. Correct.

15 Q. You had one location for that?

16 A. One location.

17 Q. It was called Heartland Mortgage?

18 A. Heartland Mortgage.

19 Q. And what type of customers did you lend money to?

20 A. All kinds of consumers, every A and B credit.

21 Q. What type of assets, were these secured or unsecured  
22 loans?

23 A. They were mortgages secured by real estate.

24 Q. And residential or commercial?

25 A. I think all of them were residential.

1 Q. And were you actively involved in the operation of  
2 that business?

3 A. No, I was not.

4 Q. Who ran that business?

5 A. Tom Traino (phonetic).

6 Q. Did that business ever provide any unsecured loans to  
7 any individuals, as far as you know?

8 A. Not that I know of.

9 Q. Did it provide any unsecured loans to businesses, as  
10 far as you know?

11 A. No.

12 Q. Why was that business stopped?

13 A. Mortgage business took a little bit of a down turn.  
14 We did approximately 80 million dollars in mortgages  
15 that particular year. I lost three of my better  
16 producers, and it was starting to be, instead of a  
17 positive cash flow, it was a negative cash flow, so we  
18 elected at that time to close the business down.

19 Q. After filing the bankruptcy, has SENDMYGIFT.COM  
20 conducted any business of any kind at all?

21 A. We had some wholesale jewelry sales and pretty much  
22 been winding down, trying to -- selling off some  
23 assets to pay off the debt.

24 Q. And the sale of the wholesale jewelry, that was just  
25 to liquidate the inventory of the jewelry store,

1 software as possible, and if he were to be an investor  
2 and the Court approved the transaction, SENDMYGIFT  
3 would own a lot of the stock.

4 Q. And prior to that investor being able to invest, the  
5 Court would have to discharge the case, correct?

6 A. I don't know what the legal process is.

7 Q. At any time did you describe for him at what point his  
8 investment would be needed?

9 A. No. He could invest at any point he wanted to,  
10 because it was a separate company.

11 Q. Do you recall how much that particular person was  
12 contemplating investing?

13 A. \$1 million.

14 Q. And you don't remember his name?

15 A. It's a foreign name. I can't think of it. I know the  
16 company, and I know where they're located. I've got a  
17 mental block as to his name.

18 Q. What's the company name?

19 A. It's a -- sorry. I have a mental block. It's a  
20 building operation in Cocoa Beach, Florida.

21 Q. What's the name of the bank holding company that you  
22 formed that you are a shareholder in?

23 A. Maximum Holding International, Inc.

24 Q. Where is the bank located that you're trying to  
25 purchase?

1 A. I'm under a Confidentiality Agreement. It's in  
2 Minnesota.

3 Q. Have you been involved in any other business ventures  
4 other than SENDMYGIFT.COM and other than this bank  
5 holding company since the date SENDMYGIFT.COM filed  
6 its petition for bankruptcy?

7 A. No.

8 Q. Have you tried to start any other businesses?

9 A. We were trying to put together some type of a security  
10 technology company relating back to, you know, the  
11 kind of technology we were familiar with, to benefit  
12 the SENDMYGIFT.COM stockholders.

13 Q. In that situation, would SENDMYGIFT.COM have been the  
14 company that would have owned a portion of the company  
15 or been the provider of the service?

16 A. It would have been the majority either shareholder or  
17 licensee or -- licensor of the technology.

18 Q. And do you hold any positions with the bank holding  
19 company?

20 A. I'm a founder.

21 Q. Any officer positions?

22 A. No. Well, technically, I think I'm chairman right now  
23 until the transaction is approved and the bank  
24 president will step into that position. It's not  
25 technically a bank holding company at this time. It's

1 just a regular company, corporation.

2 Q. But the company has sought investors?

3 A. Yes..

4 Q. Have you been involved in those meetings?

5 A. Yes..

6 Q. Does SENDMYGIFT.COM own any portion of that company?

7 A. No..

8 Q. Does the company that's formed to become a bank  
9 holding company pay you anything for your services?

10 A. Not a penny..

11 Q. Does SENDMYGIFT.COM currently pay you?

12 A. Yes, they do..

13 Q. How much do they pay you annually?

14 A. Approximately \$75,000..

15 Q. You've been in meetings with investors that want to  
16 invest in the bank holding company, correct?

17 A. Correct..

18 Q. And how is it that you communicate to them that you're  
19 acting on behalf of the holding company versus acting  
20 on behalf of SENDMYGIFT.COM?

21 A. I clearly told them I was a founder on both companies,  
22 that substantial assets are tied up in Chapter 11  
23 Bankruptcy Court.. I told them I advised the U.S.  
24 Attorney approximately three years ago that I was  
25 going to try to buy or, you know, deliver a bank

1 platform or buy a bank.

2 Q. I think you misunderstood my question. If I come into  
3 a meeting with you regarding the bank, how do I know  
4 you're not working for SENDMYGIFT.COM? Do you do some  
5 type of a written disclosure?

6 A. I think, you know, most every meeting I had with an  
7 investor I clearly tell them I'm employed by  
8 SENDMYGIFT.COM and I'm a founder on the bank holding  
9 company, proposed bank holding company, I should say,  
10 that what I'm trying to do is maximize SENDMYGIFT's  
11 hardware and computer assets and software technology  
12 to deploy in a bank holding company for either stock  
13 for my stockholders or licensing fees if, you know, if  
14 a process like that wouldn't be approved by the Court.

15 Q. Is it accurate or fair to say that many of the  
16 statements Mr. Shiber has made that are false, are  
17 regarding you?

18 A. That they are regarding both the company and me.

19 Q. But many of them are about you, correct?

20 A. I think they were about the company.

21 Q. Which ones were about the company?

22 A. Clearly, when he said SENDMYGIFT.COM ripped him off  
23 and stole the equipment and --

24 Q. Who did he say that to, because I don't get that from  
25 your testimony.



1 -- I called Daryl and said, "Where's my money? Where  
2 is SENDMYGIFT.COM's money?" And, "Oh, well, we'll get  
3 it," you know, and humming and hawing about that.

4 Q. My understanding is that now you're involved with  
5 this, what will be a bank holding company as the  
6 chairman; is that correct?

7 A. Temporary, yes.

8 Q. Do you have prior banking experience?

9 A. Yes, I do.

10 Q. Where at?

11 A. Northwestern National. Norwest.

12 Q. How many years were you in the banking industry?

13 A. Approximately six and a half years.

14 Q. In what capacities?

15 A. I had numerous positions within the bank. Prior to  
16 the bank, I also worked, represented a service of the  
17 Minnesota Bankers Association for about two years. At  
18 the bank, I had positions of junior collector, senior  
19 collector, commercial loan officer, commercial loans,  
20 consumer loans, ended up heading up the commercial  
21 business development for all of the -- at that time,  
22 they didn't have branch banking, but all of the local  
23 Northwestern, Norwest Banks, and sat on a loan  
24 committee. And then -- oh, I represented the company  
25 in Bankruptcy Court on any consumers that would have

1 filed bankruptcy. I think that's about it.

2 Q. Based on your testimony concerning your experience in  
3 the banking industry, I would take it you consider  
4 yourself someone who is experienced at a fairly high  
5 level in the banking industry, correct?

6 A. It depends on your definition of "fairly high level."  
7 I had responsibilities. I certainly wasn't at the  
8 president level.

9 Q. You're familiar with the practices of commercial  
10 lending, correct?

11 A. Correct.

12 Q. With all your experience in the banking industry, I'm  
13 wondering why you wouldn't have, anywhere on these  
14 checks, written "loan."

15 A. I wish I would have.

16 Q. And with all your experience in the commercial -- or  
17 in the banking industry, I'm wondering why you  
18 wouldn't take the time to put a note together.

19 A. I wish I would have.

20 Q. There wasn't any reason why you didn't want to  
21 document it very well, is there?

22 A. Much like your business arrangements with Mr. Shiber,  
23 of which most of them were verbal, I also entered into  
24 some verbal agreements with Mr. Shiber because I  
25 believed in his word, and my understanding in a

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re:

SENDMYGIFT.COM, Inc.,

BKY 00-35021 (GFK)  
Chapter 11

Debtor

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SENDMYGIFT.COM, Inc.,

Plaintiff,

v.

ADV 04-3035

**ORDER DENING PLAINTIFF'S MOTION  
FOR PARTIAL SUMMARY JUDGMENT**

Daryl A. Shiber, Kimberly G. Shiber,  
DHS Corporation, and K.G.S., LLC,

Defendants.

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This matter came on for hearing before the undersigned on September 28, 2004 pursuant to plaintiff's Motion for Partial Summary Judgment. Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED:

Plaintiff's Motion for Partial Summary Judgment is granted.

Let judgment be entered accordingly.

Dates: September \_\_\_\_\_, 2004

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Gregory F. Kishel  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re:

SENDMYGIFT.COM, Inc.,

BKY 00-35021 (GFK)  
Chapter 11

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SENDMYGIFT.COM, Inc.,

Plaintiff,

v.

ADV 04-3035

Daryl A. Shiber, Kimberly G. Shiber,  
DHS Corporation, and K.G.S., LLC,

Defendants.

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that that he caused by personal service to  
cause the following papers to be served:

1. Memorandum of Law in Opposition of Plaintiff's motion for Partial Summary Judgment.
2. Affidavit of John Cameron; and
3. Order denying Plaintiff's Motion for Partial Summary Judgment..

On the parties listed below at their last known addresses:

David Jon Hoiland, Esq.  
120 South 6<sup>th</sup> Street, Suite #1100  
Minneapolis, MN 55402; and

Sarah Wencil, Esq.  
Office of U.S. Trustee  
1015 U.S. Courthouse  
300 South Fourth Street  
Minneapolis, MN 55402

Dates: September 24, 2004

-e- John F. Cameron .  
John F. Cameron (#218613)  
Cameron Law Office  
33 South Sixth Street, Suite 4100  
Minneapolis, MN 55402  
(612) 341-0394

**ATTORNEY FOR DEFENDANTS**